



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-37
SUBJECT: MICHAEL MAYBERRY RETIRED CHIEF OF POLICE CITY OF HENDERSON

**A. JURISDICTION:**

Michael Mayberry ("Mayberry") is a retired Chief of Police for the City of Henderson. Mayberry served as Chief from May 2000 to April 2005. As the former Chief of Police, Mayberry is considered a former "public officer." Therefore, the Commission has jurisdiction over this request for opinion pursuant to NRS 281.465(2)(b)(2).

**B. REPORT OF INVESTIGATIVE ACTIVITIES:**

- Reviewed Request for Opinion 05-37 (Tab B)
- Reviewed subject's response received February 24, 2006 (Tab C)

**C. RECOMMENDATIONS:**

Based on investigative activities, the Executive Director recommends the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(2), and
- NRS 281.481(7).

**SPECIFIC REASON:**

No allegations or credible evidence of any fact exists that amounts to or supports a potential violation by a former public officer of the above provisions of NRS Chapter 281.

**D. SUMMARY OF REQUEST FOR OPINION:**

The request for opinion, submitted by Ron Hilford, alleges violations of NRS 281.481(2) and NRS 281.481(7) by retired Henderson Chief of Police Michael Mayberry (hereinafter “Mayberry”). The complaint alleges Mayberry violated the Ethics in Government law by:

- Allowing the current Clark County Constable for the Township of Henderson, Mr. Earl Mitchell (hereinafter “Mitchell”), to remain in that elected position while concurrently working under Mayberry as a police officer with the Henderson Police Department; and
- Gaining control of the Clark County Constable’s office for the Township of Henderson, through his official police supervisory relationship over Mitchell, and expanding his power and control to another law enforcement agency.

**E. SUMMARY OF SUBJECT’S RESPONSE:**

In his response, Mayberry provided the following information:

- Mr. Hilford has “a rather active imagination;”
- Mr. Hilford “alleges quite a conspiracy involving a number of persons I have known to be ethical public servants, including me. To say that I subordinated the Constable’s Office by allowing Mr. Mitchell to run for office is not true. To allege that I had some kind of control of the Henderson City Marshall’s Office is also not true. Apparently Mr. Hilford does not understand that those are two different offices, one run through the Municipal Court (the Marshall’s), and the other run by a person elected to the position by the voters (the Constable);
- Mayberry does not know why Mr. Mitchell ran for office. Mr. Mitchell is his own candidate, not Mayberry’s candidate;
- Mayberry states, “I was not involved in any way, shape, or form in the management of the Constable’s Office. If the voters do not like the job that Mr. Mitchell is doing I am sure they will vote him out of office. The Henderson Police Department was more than enough for me to manage and I was not in need of a ‘Fiefdom’ or another ‘unofficial City Department’ in the Constable’s Office, as described by Mr. Hilford;” and
- Mayberry further states, “Mr. Hilford has alleged the following: ‘Doing what is evil in nature; socially unjust; politically corrupt; Mr. Mayberry has transgressed the law for personal reasons and has gained a higher level of power of this elected official and his elected Office.’ I find this language extremely offensive. Not only is it not true, I have never, ever, discouraged anyone from running for public office, nor did I publicly support anyone for an office alleged by Mr. Hilford. His ‘Summary and Conclusion’ are a work of fiction and the only thing I am sure of is that he spelled my name correctly.”

**F. PERTINENT STATUTES AND REGULATIONS:**

**NRS 281.481**

**General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

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2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

\* \* \* \* \*

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

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**NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.**

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8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

**G. RESULTS OF INVESTIGATION:**

*As to NRS 281.481(2):*

NRS 281.481(2) provides:

“A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.

(b) “Unwarranted” means without justification or adequate reason.”

This ethics complaint was filed by Ron Hilford, a candidate for the elected position of Clark County Constable, Henderson Township. Mr. Hilford filed this complaint in conjunction with a complaint against Earl Mitchell, the current Clark County Constable for the Henderson Township. In the Mitchell complaint, Mr. Hilford alleges that Mr. Mitchell intentionally structured the operations of the Constable’s Henderson Township office so that Mitchell would not have to be in the office and could continue to work as a full-time police officer while concurrently collecting his Constable pay.

Here, Mr. Hilford alleges that by allowing Mitchell to do what Hilford *alleges* Mitchell has done (as described in the previous paragraph), Mayberry “used his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person” in violation of NRS 281.481(2). However, Hilford fails to provide even a scintilla of evidence that would tend to support, or even explain, how Mayberry either: 1) used his position in government; or 2) secured or granted an unwarranted privilege, preference, exemption or advantage for himself and/or for Mitchell.

There is no evidentiary basis to support that Mayberry used his position to benefit either himself or any business in which he might have a pecuniary interest. Further, Mayberry does not have a commitment in a private capacity to the interests of Mitchell. Therefore, the curiously imaginative allegations of Mr. Hilford appear frivolous, as they are without merit and have absolutely no factual basis.

***As to NRS 281.481(7):***

NRS 281.481(7) provides:

“A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.”

Mr. Hilford alleges Mayberry violated NRS 281.481(7) by somehow using Mitchell to benefit Mayberry’s personal and financial interest. Hilford speculates Mayberry intentionally orchestrated a plan to somehow control both the Henderson Police Department and the Clark County Constable Henderson Township Office through his continued employment of Earl Mitchell, after Mitchell was elected to the office of Constable. However, Hilford provides no evidence illustrating how Mayberry used “governmental time, property, equipment or other facility to benefit his personal or financial interest,” nor does he provide any evidence even linking Mitchell’s role as Constable to Mayberry’s former role as Henderson Chief of Police. Hilford merely speculates Mayberry somehow gained control of the Constable’s Henderson Township office and thus expanded his power and control over another law enforcement agency.

The numerous materials submitted with the complaint fail to explain or substantiate how Mayberry might have even attempted to do so. Therefore, again, the curiously imaginative allegations of Mr. Hilford appear frivolous, as they are without merit and have absolutely no factual basis.

While the Executive Director does have authority to conduct investigations relating to complaints received by the Commission, that authority does not contemplate undertaking an investigation to determine the possible existence of an ethics violation when the complaint fails to provide any factual basis whatsoever to support any potential alleged violation of Nevada's Ethics in Government Law.

The Executive Director finds insufficient evidence was submitted by the requestor to create even a reasonable belief in the allegations set forth within the complaint. Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Mr. Mayberry violated the provisions of NRS 281.481(2) or NRS 281.481(7).

#### **H. CONCLUSION:**

The Executive Director hereby recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations the subject violated NRS 281.481(2) or NRS 281.481(7), and further that the allegations be dismissed.

**DATED:** March 13, 2006

Stacy M. Woodbury  
**STACY M. WOODBURY, MPA**  
**EXECUTIVE DIRECTOR**